

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

WILLIAM R. COSME,

Defendant.

No. 13-CR-43 (LAP)

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

Before the Court is Defendant William Cosme's motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). (See dkt. no. 429.) The Government opposed the motion, (see dkt. no. 431), and Mr. Cosme has requested counsel to assist his filing a reply, (see dkt. no. 434). For the reasons below, those motions are DENIED without prejudice.

Mr. Cosme has filed a notice of appeal challenging his conviction and sentence. (See dkt. no. 399.) That appeal is currently docketed and has been pending before the Court of Appeals since 2017. See United States v. Cosme, No. 17-1759 (2d Cir. June 1, 2017). Those proceedings have been repeatedly delayed by Mr. Cosme's numerous requests for extensions and his filing of other motions. (See, e.g., dkt. nos. 168, 187, 193, 198, 200, 218, 225, 229, 233, 248, 267, 272, 284, 298, 333 in 17-1759.) Indeed, Mr. Cosme has had five separate appointed counsel during the pendency of his appeal, all of whom were ultimately relieved by the Court of Appeals. (See dkt. nos. 20,

21, 24, 124, 214, 244, 264 in 17-1759.) Mr. Cosme is now proceeding pro se.

"[A] notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982).

"That rule applies in criminal cases." United States v. Ransom, 866 F.2d 574, 575 (2d Cir. 1989). Accordingly, once Mr. Cosme filed his notice of appeal challenging his conviction and sentence, "jurisdiction over the questions raised in his § 3582(c) motion transferred to the [Court of Appeals]." United States v. Martin, No. 18-CR-834-7 (PAE), 2020 WL 1819961, at \*2 (S.D.N.Y. Apr. 10, 2020).

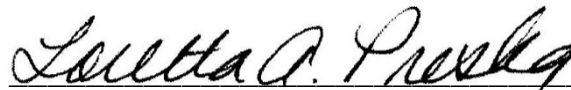
The Court observes that the Federal Rules of Criminal Procedure provide, in relevant part, that "[i]f a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." FED. R. CRIM. P. 37(a). "[T]his rule allows district courts to deny, but not to grant, a motion for which it lacks jurisdiction due to a pending appeal."

Martin, 2020 WL 1819961, at \*2. At this juncture, however, the Court declines the parties' invitation to address the merits.

For the reasons above, both Mr. Cosme's motion for compassionate release [dkt. no. 429] and his related request for counsel [dkt. no. 434] are DENIED "without prejudice and with leave to renew if the Court re-obtains jurisdiction." United States v. Vigna, 455 F. Supp. 3d 68, 72 (S.D.N.Y. 2020). The Clerk of the Court shall mail a copy of this order to Mr. Cosme.

**SO ORDERED.**

Dated: February 11, 2021  
New York, New York

A handwritten signature in black ink, reading "Loretta A. Preska", written over a horizontal line.

LORETTA A. PRESKA  
Senior United States District Judge